

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF TEXAS
LUBBOCK DIVISION

SAMUEL REAVES,)
Institutional ID No. 1069396,)
SID No. 02743387,)
Prior TDCJ ID Nos. 481622, 642454,)
768452, and 968415,)
Plaintiff,)
v.) CIVIL ACTION NO.
RICHARD VOGLEGESANG, Warden, *et al.*,) 5:10-CV-00044-C
Defendants.) ECF

ORDER

Plaintiff Samuel Reaves, acting *pro se*, filed a civil rights complaint pursuant to 42 U.S.C. § 1983 against the Defendants, Richard Voglegesang, James Ramsey, F. Early, Mrs. Franco, Richard Aynes, Cynthia D. Guyer, and NFN Lopezano, employees of the Texas Department of Criminal Justice Preston E. Smith Unit. Plaintiff alleges that Defendants failed to protect him from serious harm, failed to provide him with adequate dental treatment, forced him to provide work in contravention to his medical work restrictions, and infringed upon his right to access the courts by interfering with his mail. Plaintiff seeks dental care, injunctive relief, and monetary relief and, in the alternative, he requests that this Court order his release to parole.

The complaint was transferred to the docket of the United States Magistrate Judge, who ordered authenticated copies of Plaintiff's prison records that were relevant to his complaint and notified authorities that a hearing pursuant to *Spears v. McCotter*, 766 F.2d 179, 181-82 (5th Cir. 1985), would be scheduled in the near future. The Magistrate Judge conducted a *Spears* evidentiary hearing on June 15, 2010, and Plaintiff testified under oath.

Because Plaintiff did not consent to proceed before the United States Magistrate Judge, pursuant to this Court's Order entered on March 24, 2010, the Magistrate Judge entered a Report and Recommendation and transferred the case back to this Court on November 23, 2010. Plaintiff filed objections to the Report and Recommendation on December 6, 2010.

This Court has made an independent examination of the pleadings and the record in this case and finds that Plaintiff's objections should be overruled and the Magistrate Judge's findings and conclusions should be ADOPTED.

It is, therefore, **ORDERED**:

- (1) Plaintiff's Objections dated December 6, 2010, are overruled.
- (2) For the reasons set forth in the Magistrate Judge's Report and Recommendation dated November 23, 2010, the instant civil rights action is DISMISSED with prejudice pursuant to 28 U.S.C. § 1915(e)(2) and 42 U.S.C. § 1997e.
(3) This dismissal shall count as a qualifying dismissal under 28 U.S.C. § 1915 and *Adepegba v. Hammons*, 103 F.3d 383 (5th Cir. 1996).
- (4) The dismissal of Plaintiff's complaint does not release Plaintiff or the institution where he is incarcerated from the obligation to pay any filing fee previously imposed. *See* 28 U.S.C. § 1915(b)(1) ("Notwithstanding subsection (a), if a prisoner brings a civil action or files an appeal in forma pauperis, the prisoner **shall be required to pay the full amount of a filing fee.**") (emphasis added); *Hatchet v. Nettles*, 201 F.3d 651, 654 (5th Cir. 2000) ("No relief from an order directing payment of the filing fee should be granted for a voluntary dismissal.").
- (5) Plaintiff is advised that if he appeals this Order, he will be required to pay the appeal fee of \$455.00 pursuant to the PLRA, and he must submit an application to proceed *in forma*

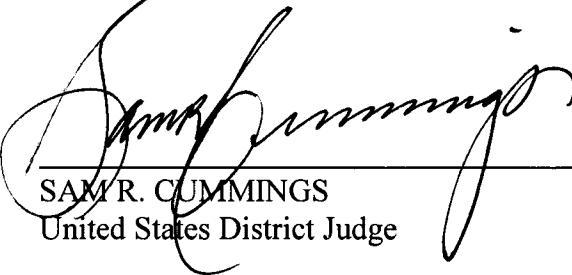
pauperis and a 6-month Certificate of Inmate Trust Account at the same time he files his notice of appeal.

(6) Any pending motions are DENIED.

Judgment shall be entered accordingly.

A copy of this Order shall be mailed to the Office of General Counsel, TDCJ-ID Litigation Support, P.O. Box 13084, Austin, Texas, 78711 and to TDCJ Local Funds Division, P.O. Box 629, Huntsville, Texas 77342-0629.

Dated February 29, 2012.



SAM R. CUMMINGS
United States District Judge